

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FINANCE AND CLAIMS SUBCOMMITTEE ON DISTRICT COURT FUNDING**

**Call to Order:** By **SEN. JOHN ESP**, on March 11, 2003 at 5:00 P.M.,  
in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. John Esp, Chairman (R)  
Sen. Edward Butcher (R)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee, Vice-Chairman (R)  
Sen. Linda Nelson (D)  
Sen. Jerry O'Neil (R)  
Sen. Joseph (Joe) Tropila (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Lynn Zanto, Legislative Branch

**Please Note:**

**Audio-only Committees:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 134, 1/10/2003

**Discussion:**

**Lisa Smith, Administrative Services Director Supreme Court**, presented an overview of the Judiciary budget proposal from the beginning of the session to where they are today. The **Department of Revenue** collected all of the data from the counties for 2001 and for fiscal year 1999. Throughout the spring and summer after the session they worked with the **Department of Revenue** because counties kept calling and revising the numbers. They needed to allocate the appropriation for the budget for fiscal year 2003

and cut off the changes. They were uncomfortable with the accuracy of those numbers because they were recorded 56 different ways. As soon as they got the budget allocated, it was time to work with the budget office on the 2004-05 budget. They had nothing but the information that had been reported to the **Department of Revenue**. They were not comfortable with their budget allocation, so they went to the most reliable information they had which was compiled in their annual report. The court puts out an annual report of the district court reimbursement program and the expenditures are recorded in very broad categories. When they took that information they assumed two things. They didn't know if those figures represented 100 percent of the costs statewide. For example, if they had counsel being paid at \$60 per hour and if the county paid more, they had to pick up the difference. The assumption was made those numbers represented 75 percent of the costs. The other assumption was they took the reports from 1996 to 2001 and determined the average increase in each of those expenditures and applied the average increase. Using these assumptions they came up with a projection for district court assumption that was about \$27M per year and \$54M over the biennium. The fiscal note in SB 176 stated that \$43.6M of district court costs would be coming over to the state for 2002-03. Also, HB 124 from last session anticipated an appropriation of up to \$25M. They felt they were where they were expected to be and on the right track by proposing \$27M per year from the projections of last session. Their current year appropriation is \$18.4M and right now their current projection shows they might be able to spend within \$12,000 of that. The problem is they have not reimbursed the counties for 2003 indigent defense costs because they do not have the staff to get it done. Last summer they had nothing solid to work with and then had to walk into the budget process. They paid off the old district court reimbursement program to the counties in December, which was 6 months behind. They also contracted a computer wizard and did a data dump on their old district court reimbursement program so they could see some comparative data. The **Department of Revenue** has also been spending hours re-checking the numbers that were reported. It was clear, with the economic situation in the state, they would not be able to find \$17M and they had to find another approach. They realized that they needed to lessen the impact of district court assumption. They looked at costs and revenues and came back with an approach to fully fund personal services, give a three percent increase over the general operating costs, provide \$17.5M for variable costs and leave the fallback on the counties. It is clear this Legislature does not want that fallback to be on the counties. They went back to the drawing board to see if they could eliminate the fallback. They are 80-90 percent confident the proposal will work with no fallback on the counties. She discussed the revised judiciary

proposal **EXHIBIT(fcs51b01)** and the 8.5 FTE's that were needed for staffing. **EXHIBIT(fcs51b02)**.

**{Tape: 1; Side: A; Counter: 16.3}**

**CHAIRMAN JOHN ESP, SD 13, Big Timber,** asked **Ms. Smith** to describe the accounting system.

**Ms. Smith** said she didn't know how much detail they wanted, but she would give them a simple version of the total district court assumption budget. **EXHIBIT(fcs51b03)**. Within each district they have an organization for each system such as court reporter, clerk of court, probation, youth court, etc. If someone came in and asked what was charged to district court administration in the seventh judicial district court compared to the twelfth they could provide reports at that level, etc.

**CHAIRMAN ESP** asked if they could provide reports on Juvenile Probation officers statewide including salaries, benefits, supplies, etc., and asked what else was in that category. There appears to be seven or eight sub-categories and within that is there another level.

**Ms. Smith** said there are different levels of expenditures. The first level is the 1000 level for personal services, 2000 level for operating etc. Under those it is broken down into line items; salaries are level 1100, benefits are level 1400, supplies are level 2200 etc.

**CHAIRMAN ESP** asked if the county reimbursement reports will be converted to this system in fiscal year 2003 and what would they do differently in 2004.

**Ms. Smith** said she felt 2004 would be the same as in 2003. Under the old district court reimbursement program the payments were calculated on a sub-system; it was not the state system. Staff would go in and write one warrant to each county and they would record it under the expenditure category as grants to counties. Grants are at the first level just like personal services, etc. In 2003 because they are paying individual bills, the invoices will be paid in the expenditure category and they will not be charged to grants.

**CHAIRMAN ESP** asked if they envisioned paying all expenses directly.

**Ms. Smith** said SB 176 directs them to reimburse the counties for certain expenditures. Everything that is state assumed is to be paid directly. There are some things that they cannot pay such as

witness and juror fees. It is more efficient if counties pay them right there directly that day, etc.

**{Tape: 1; Side: A; Counter: 26.4}**

**SEN. MIKE WHEAT, SD 14, Bozeman,** asked if the judicial branch was about 80-90 percent confident this budget would work.

**Ms. Smith** said yes, they think they can make it work.

**SEN. WHEAT** asked if they need a contingency fund or supplemental so to pay those costs that are unanticipated, etc.

**Ms. Smith** said that was correct.

**SEN. WHEAT** asked to have the authorization for a biennial appropriation explained further.

**Ms. Smith** said right now they have employees at the district court afraid to do anything as far as spending money. If they can keep costs under control in the first year of the biennium, with a biennial appropriation, whatever is left over could be carried into the second year if they have a huge year of expenses. The biennial appropriation would allow them to manage the dollar amount over both years. This would give them more flexibility and better management. They would rather do this than come before the Legislature to request a supplemental, which would take resources, etc.

**SEN. WHEAT** asked if they had a biennial appropriation and overspent it in the first year, could they dip into the second year and at the end of the second year if they still needed funds would they have to come in for a supplemental.

**Ms. Smith** advised that was correct. If they were overspending in the first year the Legislature would be the first to hear about it. They would have six months to prepare before the next Legislative session to try and fix this spending problem.

**SEN. WHEAT** asked if there was a process to report to the Finance Committee after the first year. He asked if they were overspending the first year, what they would do to inform the Legislature.

**Ms. Smith** replied if they could not manage their budget they would be in before the end of the first year to fix the problem. They are proposing language to report to the Legislature once a year.

**SEN. WHEAT** asked if the language they were proposing would go into **SB 134** would require the court to report to the Finance and Claims Committee or an interim committee.

**Ms. Smith** advised it would be in HB 2 and would require them to go before the Legislative Finance Committee to give a budget status report. She felt it would be more appropriate to report to them if there was a problem rather than being required to report to them all the time.

*{Tape: 1; Side: B; Counter: 3.2}*

**SEN. DAN MCGEE** asked if they were going to use **Brian Wolf** in regard to the Information Technology FTE.

**Ms. Smith** said the 8.5 FTE's and \$800,000 for a biennial appropriation were authorized in the 2001 Legislative Session to administer District Court assumption. They were asked to show what they had done with these 8.5 FTE's and the positions that they held. If the Legislature established a Public Defender Commission in the Executive branch to take indigent defense, it was questioned how many FTE's could be sent over to help with the work load. She indicated they are not getting the job done right now and they cannot give up their FTE's. They have a two person human resource department that is responsible for payroll. They have a request for 2.25 FTE's and they figure they could give up one of those if indigent defense moves to the Executive branch. She confirmed their IT director is working with **Brian Wolf**.

**SEN. MCGEE** asked if the human resource director was one of the two people, or were they expecting to create a third position.

**Ms. Smith** advised the human resource director position is filled. All 8.5 FTE's are filled and the other person in human resources is the payroll technician.

**SEN. LINDA NELSON** asked if they were anticipating more expenses in 2004 and is this why they need the biennial appropriation

**Ms. Smith** answered no, the costs in all of the proposals from budget development on up are lopsided in their projections because when they worked to achieve the Governor's target they did biennial amounts and it is a mistake. She felt the costs would be very close each year.

**SEN. NELSON** said she felt if it was an annual appropriation they would have a better target.

*{Tape: 1; Side: B; Counter: 8.6}*

**CHAIRMAN ESP** asked if the district court assumption or any part of the Judiciary appeared before a Legislative oversight committee. **Ms. Smith** advised since district court assumption was created, they came before the Finance committee to keep them informed.

**CHAIRMAN ESP** asked if this had been done at every quarterly meeting.

**Ms. Smith** said on District Court assumption, they appeared every time they were invited.

**CHAIRMAN ESP** asked if in 2004 are they envisioning a reimbursement pool in the Clerk of District Court or Court Administrator level to timely handle witness and jury fees.

**Ms. Smith** advised to a certain extent, but it would not have to be a separate pool. Under this proposal they should be able to make payments on a timely basis. The Clerk of Court will pay the jury fees, send the bill to the state and the state will pay the county.

**CHAIRMAN ESP** asked what amount of money they are talking about in those areas.

**Ms. Smith** advised jury fees reimbursed at 80 percent in 2002 were \$164,000 and witness fees were \$175,000.

**CHAIRMAN ESP** asked if the individual witness or juror was willing to wait 2 weeks.

**Ms. Smith** said she would like to refer that question.

**SEN. WHEAT** asked about the turnaround time for a bill from a county to the court for payment of a witness fee, juror fee, etc.

**Ms. Smith** indicated the state policy is 30 days.

**SEN. WHEAT** asked about their level of confidence that they can meet the 30 days if they pass this proposal.

**Ms. Smith** asserted they would comply with the 30 days.

**SEN. MCGEE** asked **Ms. Smith** if she was familiar with HB 18. Currently the \$5 surcharge for IT systems generates around \$900,000 per year. If they go to a \$10 surcharge it will be \$1.8M. He asked was the additional \$900,000 on the Revised Judicial Proposal.

**Ms. Smith** replied it is not because they isolated the General Fund. The original \$900,000 does not even begin to meet all of the new IT needs statewide for the courts. Originally, they only had the Judges and the Clerks and now they have Juvenile Probation Officers, judge's staff, etc.

**SEN. MCGEE** asked if, in the operating expenses, didn't they have IT in the General Fund.

**Ms. Smith** said there is language in HB 2 that if HB 18 passes, the General Fund would be reduced by \$71,000. There is language in their budget indicating that legislation is required to fund the proposals. They have proposals in HB 2 for IT, but HB 18 is required to fund that proposal.

*{Tape: 1; Side: B; Counter: 18.1}*

**CHAIRMAN ESP** asked how jurors and witnesses should be paid.

**Nancy Sweeney, Lewis and Clark County, Clerk of District Court,** advised when a jury trial occurs there are some expenses, such as plane tickets to have witnesses come from a distance and they can be purchased ahead of time. Larger amounts for travel are paid by the Supreme Court. There are witnesses and jurors that are local and in many cases these individuals do not have gas money to come to the courthouse to serve. The Clerks of Court around the state have a pegboard system in which they write out a check the same day. In Lewis and Clark Co. they have petty cash for immediate payout, but most jurors are paid 2 weeks afterward. On a statewide basis she didn't know how it could be handled efficiently as some need money when they get to the courthouse.

**CHAIRMAN ESP** asked if there was a state-employed District Court administrator in every county to handle these problems.

**Ms. Sweeney** responded in Lewis and Clark County they have a secretary that is an administrator for the court but she didn't feel that every county had this. All of these bills are sent into the state for payment anyway.

**SEN. WHEAT** asked how much juror's get paid.

**Ms. Sweeney** clarified a juror reporting for the first day until the panel is selected gets \$12.00 per day and once they are selected for the final panel they are paid \$25 per day.

**SEN. WHEAT** asked about Lewis and Clark County's procedure to pay someone who is on a week-long trial--are they paid by the day or at the end of the week.

**Ms. Sweeney** reported they pay on a regular two-week cycle unless someone has a hardship.

**SEN. WHEAT** asked if the 30-day turnaround for the county to get paid from the state was an unreasonable period of time.

**Ms. Sweeney** testified it is not unreasonable, but she wondered how realistic it was. The judiciary and the state funded system is a system in transition.

*{Tape: 1; Side: B; Counter: 25.5}*

**Ms. Smith** said she was not real clear on the costs they would be paying with the \$7.5M per year. Those are the variable costs that fluctuate in direct proportion to the caseload, so they are much harder to handle than just the regular operating costs.

**CHAIRMAN ESP** advised they have been working on a gray bill to incorporate some of the language that was in **SB 218**.

**SEN. WHEAT** passed out a gray bill and explained it.

**EXHIBIT(fcs51b04)**. The gray bill takes **SB 218**, merges the appellate defender system, and creates a statewide trial defender system. The two are merged and are administratively attached to the **Department of Administration**. He discussed section 2-15-1020 on page 2, section 3 on page 6 and new section 4 on page 7. He discussed new section 7 on page 8 concerning the **Chief Public Defender** and 46-8-202 and page 12, new section 12. He also discussed new section 13 on property rights and new section 14 concerning transition. The bill creates a statewide public defender system and the appellate and trial system would be under the **Public Defender Commission**. They would like to put a firewall between the appellate and trial system. If there are legitimate cases of ineffective counsel raised at the appellate level based on how a public defender conducted him or herself at trial and it is a legitimate claim, then the appellate defender is insulated from the trial system. The appellate defender could take the case or outside counsel could be hired at that level to take on the defense. The feedback of the people involved in the public defender system feel this is proper and feel it is a move in the right direction.

*{Tape: 2; Side: A; Counter: 5.0}*

**CHAIRMAN ESP** asked about the concept of the firewall and asked where it is in the bill.

**SEN. WHEAT** said he did not know if it was in the bill yet. Initially he thought the appellate defender would not be directly



supervised by the Chief Public Defender but would be supervised by the commission and this would be the firewall. He felt legitimate cases on appeal might be better handled by someone who is contracted rather than by someone in the system itself. Most of the issues of ineffective assistance of counsel are raised at the post conviction level when the convicted offender is already in prison and not necessarily on appeal. The public defender is not being used on the post conviction level.

**SEN. MCGEE** asked about page 8 under new section 7 regarding the Chief Public Defender. Line 18 says the salary will be determined by the commission. He asked about the oversight of the commission in setting the salaries.

**SEN. WHEAT** said he did not know if there was any oversight. They are going to have an administrator of a statewide trial system and they cannot establish their salary at the level of a county attorney, etc. When they started looking at salaries across the state, some public defenders in various counties have salaries that exceed what county attorneys make. There is no oversight except by the commission.

**SEN. MCGEE** agreed that it needed to be a well-paid job, but he did not want it to become exorbitant. He asked who was going to administer this. There is a chief defender and appellate entity and he asked whom they report to.

**SEN. WHEAT** advised they would report to the commission.

**SEN. MCGEE** wondered if they were going to set up another department of state government or would they be under the court or the **Department of Administration**, etc.

**SEN. WHEAT** said they would be administratively attached to the **Department of Administration**.

**SEN. JERRY O'NEIL, SD 42, Kalispell**, asked how many people are going to be in this department of Public Defender.

**SEN. WHEAT** indicated he did not know for sure.

**SEN. JEFF MANGAN** advised there are currently 49 FTE's statewide. Most of those costs were in the old reimbursement language and they are currently trying to get more accurate figures on those costs. In the new bill they are looking at 4 to 8 FTE's to administer the Chief Public Defender program. They envisioned having a Chief Public Defender and an administrator. The Chief Public Defender would be there for case management and the administrator would focus on the accounting and non-trial tasks.

They would also have support staff for those two individuals and this would create approximately 8 new FTE's. On the last fiscal note with 8 FTE's and other costs with the multipliers, they were looking at \$6.9M per year. If they take off the \$5.5M, which was indigent defense or the public defender system and the three-tiered proposal, they are \$1.6M short. There are some areas they need to address and the first area is the contingency language. They discussed if the \$1.2M for professional services could possibly be used for indigent defense. Those funds would be managed by the budget office and they could be used on an as needed basis for the judicial branch. There are also some other issues that need to go into the fiscal note. They need to look at the transition costs of those current employees of county government who have vacation and sick leave and see what those costs are. They also need to look at rent costs in the first biennium. They included rent cost in the \$6.9M, and he suggested that the counties pick up those costs for the first couple of years. He felt that they needed to get a handle on the new personal services costs. They utilized the \$90,000 salary for the Chief Public Defender and this has been changed. He also wondered if they needed 8 FTE's or if they could do it with 5 FTE's, etc. They also need to address those costs the Public Defender office might be spending on misdemeanors that are dealt with in the justice court and are not attached to the district court where they are reimbursed. They need to find out if these costs are a significant amount and if so, it needs to be included in the fiscal note. They also need to find out if there are any other costs that are not being reimbursed and if they need to be included.

***{Tape: 2; Side: A; Counter: 22.6}***

**SEN. O'NEIL** advised he would like the Administrator of the Public Defender, who is in charge of over \$6M and approximately 49 employees, to have an advanced degree in Business Administration rather than a degree in law.

**SEN. MCGEE** asked if they had an approximate cost of the rental of facilities at the county level.

**SEN. MANGAN** advised it is \$192,000 per year.

**SEN. MCGEE** asked about the position of the counties on assuming those rental costs for the biennium.

**Gordon Morris, MT Association of Counties**, they implied that was acceptable when they had the original hearing on **SB 218**. He felt county commissioners would have no problem with the transition.

**Mr. Morris** commented on the gray bill. On page 14 the original intent when **SB 218** was introduced was section 1 would be effective on passage and approval and they would transition into state assumption of the public defender system in 2004. In the gray bill they are making this act effective in 2004 and striking sections 1 and 10 of **SB 218** and he felt they should not do this. They should make the act effective July 1, 2004 and new section 1 and 4 effective July 1, 2003. Otherwise the new Public Defender Commission is not empowered until July 1, 2004 and he felt they should be up and running in 2003 so that they could work on these transitions.

*{Tape: 2; Side: A; Counter: 28.3}*

**SEN. MANGAN** noted they had intended to do that because it is included in the fiscal note.

**SEN. WHEAT** advised that was their intention and it was an oversight.

**Chief Justice Karla Gray, Supreme Court**, advised it is true that the huge majority of conflict cases come in post conviction rather than on direct appeal. She urged if they are going to have a statewide system that they provide the money for Information Technology. She discussed new section 14 of the gray bill. They have been criticized for having salary increases in the interim and this new section may be leaving a loophole for those same types of problems at the county level. She is concerned somewhat about the fiscal note and the previous testimony concerning the \$5.5M and did not know where that money was coming from.

*{Tape: 2; Side: B; Counter: 6.0}*

**Peggy Beltrone, Cascade County Commissioner**, asked if anyone had looked at the compensation time issue. The **Board of Crime Control Youth Justice Council** just completed an assessment of Juvenile Defense in Montana and that report carried a lot of recommendations and could be helpful in this process.

**SEN. MANGAN** said when he mentioned the \$6.9M of approximate cost

per year and that they would be 1.4M over, he was talking about the cost between public defender, juvenile probation and remaining state costs from state assumption, which was \$5.5M. He did not know if this would reduce the judiciary's budget if this bill went through.

**Justice Gray** said she had no present recollection of the \$5.5M figure. She was under the impression that the \$5.5M would come out of the overall variable pot. The amount of money that they had and spent in fiscal year 2002 on indigent defense was \$4.5M.

**CHAIRMAN ESP** asked for a detailed breakdown from the Judiciary on how they are going to do the accounting procedures and detailed items, etc. in the next biennium.

**Ms. Smith** asked if they would like reports from the accounting system.

**CHAIRMAN ESP** advised they would at least like a sample with the different categories. The other issue that will come up in **Finance and Claims** is what the Judiciary has done with their IT money so far and what their plans are in the future. He felt the committee needed a report on this.

**ADJOURNMENT**

Adjournment: 6:50 P.M.

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SEN. JOHN ESP, Chairman

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PRUDENCE GILDROY, Secretary

JE/PG

**EXHIBIT (fcs51bad)**